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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 322

ROSCOE HERGET, TRUSTEE IN BANKRUPTCY OF N. L. ROGERS & COMPANY, INC., AN ILLINOIS CORPORATION, BANKRUPT, *Petitioner,*

vs.

THE CENTRAL NATIONAL BANK & TRUST COMPANY OF PEORIA, A NATIONAL BANKING CORPORATION, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Brief for the Respondent.

JOHN M. ELLIOTT,
CHESTER L. ANDERSON,
Peoria, Illinois.

WALTER BACHRACH,
WALTER H. MOSES,
231 So. LaSalle St.,
Chicago, Illinois,
Attorneys for Respondent.

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Brief for the Respondent.

Opinions Below.

The opinion of the United States District Court for the Southern District of Illinois (R. 9) is reported in 53 F. Supp. 265. The opinion of the circuit court of appeals (R. 20-23) is reported in 141 F. 2d 150.

Jurisdiction.

The judgment of the circuit court of appeals sought to be reviewed was entered February 5, 1944 (R. 23). Petition for rehearing seasonably filed by petitioner (R. 25) was denied on April 5, 1944 (R. 31). By order of Mr. Justice Murphy entered June 10, 1944, time within which to file petition for certiorari was extended to August 5, 1944 (R. 34). Petition for a writ of certiorari was filed August 5, 1944, and was granted October 9, 1944 (R. 35). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

Counter-statement of Questions Presented.

1. Whether the District Court and Circuit Court of Appeals were not correct in holding that this proceeding to recover a preference under Section 60b of the Bankruptcy Act was barred by the limitation of two years from the date of adjudication prescribed by Section 11e thereof, because such two year limitation prescribed by Section 11e has exclusive application to actions by the Trustee based upon causes of action created by the Bankruptcy Act.

2. Whether the District Court and Circuit Court of Appeals were not correct in holding that Section 11e of the Bankruptcy Act barred the bringing of the instant suit by the Trustee at the end of two years from the date of adjudication under Section 11e for the reason that no different or longer period of limitation is prescribed for the bringing of such action by the Illinois statute of limitations.

Statutes Involved.

Subsection 11e of the Bankruptcy Act, added by the Chandler Act, June 22, 1938, c. 575, sec. 1, 52 Stat. 840, 849 (11 U. S. C. sec. 29e) provides:

A receiver or trustee may, within two years subsequent to the date of adjudication or within such further period of time as the Federal or State law may permit, institute proceedings in behalf of the estate upon any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy. • • •[1]

The Illinois statute of limitations, Act of April 11, 1873, Laws 1873, p. 121 (Ill. Rev. Stats. (State Bar ed. 1943) c. 83, secs. 13-16) provides:

Sec. 12. The following actions can only be commenced within the periods hereinafter prescribed, *except when a different limitation is prescribed by statute.*

Sec. 13. Actions for slander or libel shall be commenced within one year next after the cause of action accrued.

Sec. 14. Actions for damages for an injury to the person, or for false imprisonment, or malicious prosecution, or for a statutory penalty, or for abduction or for seduction, or for criminal conversation, shall be commenced within two years after the cause of action accrued.

Sec. 15. Actions on unwritten contracts, express or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal prop-

---

[1] Prior to the passage of the Chandler Act, the relevant provision of the Bankruptcy Act was (11 U. S. C. Sec. 29(d)):

Sec. 11d. Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

The Chandler Act amended this subsection so as to narrow its application to suits *against* the trustee (11 U. S. C. Sec. 29(d)):

Sec. 11d. Suits shall not be brought against a person who has acted as a receiver or trustee of a bankrupt estate, upon any matter arising in connection with the administration thereof, subsequent to two years after the estate has been closed.

Suits *by* the trustee are covered by Section 11e added by the Chandler Act.

erty or damages for the detention or conversion thereof, and *all civil actions not otherwise provided for, shall be commenced within five years next after the cause of action accrued.* (Emphasis supplied.)

Statement.

The statement set forth on pp. 4 and 5 of Petitioner's Brief is correct. However, the last paragraph thereof fails to make clear that the opinion of the Circuit Court of Appeals based its holding both upon the ground (1) that the two year limitation provided by Section 11e applies exclusively to this cause, since it is a suit to set aside a voidable preference, and (2) that, even if the two year limitation provided by Section 11e were not to be exclusively applied to causes of action created by the Bankruptcy Act, such as the one at bar, there is no period of limitation fixed by the Illinois statute of limitations applicable to such cause of action and for that reason petitioner's suit was barred by the two year provision of Section 11e.

SUMMARY OF ARGUMENT.

There is no Illinois statute of limitations applicable to a suit by a trustee in bankruptcy to set aside and recover voidable preferences.

A.

The "catch-all" clause in section 15 of the Illinois Statute of Limitations does not apply to suits to set aside and recover voidable preferences under section 60b of the Chandler Act because:

(1) Such suits are expressly excepted by section 12 of that Act from the provisions of section 15, thereof, since section 11e of the Chandler Act prescribes by statute a different limitation for such suits.

Handtoffski v. Chicago Traction Co., 274 Ill. 282, 113 N. E. 620,

and

(2) the limitation period of two years from the date of the adjudication provided in section 11e of the Chandler Act constitutes the sole limitation law applicable to such actions.

Meikle v. Drain, 69 Fed. (2d) 290.
Arnold Grocery Co. v. Schackelford, 140 Ga. 585; 79 S. E. 470.
Davis v. Willey, 273 Fed. 397.
Bailey v. *Glover*, 88 U. S. 342.
Isaacs v. *Neece*, 75 Fed. (2nd) 566.

B.

The limitation provision in the Bankruptcy Act (section 11e) constitutes the sole limitation law applicable to

suits brought under section 60b of that act to set aside and recover voidable preferences.

Meikle v. Drain, 69 Fed. (2d) 290.
Arnold Grocery Co. v. Shackelford, 140 Ga. 585, 79 S. E. 470.
Davis v. Willey, 273 Fed. 397.
Jenkins v. *International Bk.*, 106 U. S. 571.
Isaacs v. *Neece*, 75 Fed. (2nd) 566.

C.

Section 11e of the Chandler Act applies to bar the bringing of suits to recover voidable preferences under section 60b of that act unless such suits are brought within two years from the date of adjudication. In so doing that section codifies the unanimous holdings of the courts construing section 11d of the Bankruptcy Act of 1898 to the effect that the limitation provision therein set forth to the exclusion of any other statute of limitations whatsoever, state or federal, applied thereto.

Meikle v. Drain, 69 Fed. (2d) 290.
Arnold Grocery Co. v. Shackelford, 140 Ga. 585, 79 S. E. 470.
Davis v. Willey, 273 Fed. 397.
Bailey v. *Glover*, 88 U. S. 342.
Isaacs v. *Neece*, 75 Fed. (2nd) 566.

D.

Our contention that section 15 of the Illinois Statute of Limitations does not apply to this case is based upon—

(1) the provisions of section 11e of the Chandler Act,

(2) the uniform holdings under the Bankruptcy Acts of 1841, 1867 and 1898 that the limitation provisions contained in such Acts furnished the exclusive limitation law

applicable to suits brought to set aside and recover voidable preferences.

Bailey v. *Glover*, 88 U. S. 342.
Jenkins v. *International Bank*, 106 U. S. 571.
Meikle v. *Drain*, 69 Fed. (2d) 290.
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Arnold Grocery Co. v. *Shackelford*, 140 Ga. 585; 79 S. E. 470.
Isaacs v. *Neece*, 75 Fed. (2d) 566.

(3) the express language contained in Section 12 of the Illinois Statute of Limitations excepting from the purview of that Act, and more particularly from Section 15 thereof, actions as to which there was provided a different limitation prescribed by federal statute such as section 11e of the Chandler Act, and

(4) the decision of the Supreme Court of Illinois in *Handtoffski* v. *Chicago Traction Company*, 274 Ill. 282, 113 N. E. 620, holding that section 15 of the Illinois Statute of Limitations Act relied upon by petitioner, has no application to any suit when a different limitation is provided therefor by statute, state or federal.

E.

The cases differing in their holdings from the decisions of *Davis* v. *Willey*, 273 Fed. 397 and *Meikle* v. *Drain*, 69 Fed. (2d) 290, do not differ from the holding in those and other cases that only the limitation provision in the bankruptcy act (and not any non-bankruptcy federal or state statute of limitations) applies to suits under section 60b of the bankruptcy act to set aside and recover voidable preferences. The leading case in that group is *Isaacs* v. *Neece*, 75 Fed. (2d) 566. They criticized the holdings in *Davis* v. *Willey* and *Meikle* v. *Drain*, on the ground that the latter do not go far *enough* in that they fail to hold that the exclusive limitation period applicable to suits in

all types of actions brought by the trustee is the bankruptcy limitation contained in that act and not any non-bankruptcy federal or state statute of limitations.

F.

No case has been or can be cited by petitioners to support the contention that the Illinois five year statute of limitations applies to or controls this case.

G.

The phrase "Federal or State law," as used in two places in section 11e of the Chandler Act, in the absence of an indication to the contrary, must be assumed to have been employed by Congress in the same and not in different senses.

United States v. Cooper Corporation, 312 U. S. 600, at 607.

Moweaqua Coal Corp. v. Indust. Corp., 360 Ill. 194, 195 N. E. 607.

H.

Giving that phrase in both instances in which it is used in section 11e the same meaning, it is clear that the provision "for such further time as the federal or state law may permit" cannot apply to this suit because it is based upon a cause of action (to set aside an alleged voidable preference) created by the bankruptcy act. The second instance in which that phrase ("Federal or State Law") is used clearly shows that claims under non-bankruptcy federal law and state law are meant since that phrase is there used as applied to causes of action which could have pre-existed the filing of the petition in bankruptcy.

I.

The provision for further time for the institution of proceedings on behalf of the estate contained in section 11e applies only to claims which are not created by the bankruptcy act, and which were not outlawed at the time of the filing of the petition in bankruptcy. It does not apply to the instant suit to set aside an alleged voidable preference which is a cause of action created by that Act.

Davis v. Willey, 273 Fed. 397.

Arnold Grocery Co. v. Schackelford, 140 Ga. 585; 79 S. E. 470.

Isaacs v. Neece, 75 Fed. (2d) 566.

Bailey v. *Glover*, 88 U. S. 342.

Jenkins v. *International Bank*, 106 U. S. 571.

Meikle v. *Drain*, 69 Fed. (2d) 290.

ARGUMENT.

SECTION 11e OF THE CHANDLER ACT BARS THE INSTANT ACTION BECAUSE IT WAS NOT BROUGHT ON OR BEFORE APRIL 11, 1940, WHICH WAS TWO YEARS SUBSEQUENT TO THE DATE OF ADJUDICATION IN BANKRUPTCY OF N. L. ROGERS & COMPANY, INC.

I.

As far as suits brought by the trustee to set aside and recover alleged preferences are concerned, section 11e applies to bar the bringing of them unless the same are brought within two years from the date of adjudication. In so doing it codifies the unanimous holdings of the courts construing section 11d of the Bankruptcy Act of 1898 to the effect that the limitation provision set forth in the Bankruptcy Act, to the exclusion of any other statute of limitations whatsoever, state or federal, applied thereto.

Since this case involves a suit by a trustee in bankruptcy to set aside alleged voidable preferences, the fundamental question is the proper construction of section 11e, as applied to a suit to enforce such a cause of action by the trustee.

Petitioner's brief at pages 21-22 sets forth the sole comment in the Committee Report to the House of Representatives with respect to the Chandler Act which was made with reference to section 11e. It consists in substance merely of a restatement of the provision itself. It is observed from this fact that the Committee was not of the opinion that it was proposing a radically new piece

of legislation which required extensive discussion because of the change to be made in the existing law. As an examination of the decisions of the courts construing the limitation provision contained in section 11d of the Bankruptcy Act of 1898 will disclose, a proper construction of section 11e of the Chandler Act demonstrates that it made no substantial change in the existing law, and merely set at rest certain conflicts in the decisions interpreting section 11d.

Section 11d of the Act of 1898 provided as follows:

> "Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed." (Sec. 29(d), USCA Tit. 11)

As the examination made hereinafter of the decisions applying and construing this provision discloses, the courts were unanimous in holding that the limitation provisions of section 11d of the Act of 1898 were the sole measure of the time within which actions were required to be brought by the trustee to set aside alleged preferences, and no period of limitation contained either in any state law or in any other federal statute could properly be applied to such a proceeding. To interpret section 11e of the Chandler Act to impose a period of limitation of two years from the date of adjudication on the bringing of such an action by the trustee, without regard to the provisions of any state or other federal law relating to the time within which actions may be brought, codifies this unanimous result reached by the decisions construing section 11d of the Act of 1898. It is our contention that such is the only proper interpretation of section 11e of the Chandler Act, and that such interpretation sustains the judgment below and defeats the instant action, which was not brought until almost five years after the date of adjudication herein.

The decisions under the 1898 Act were in substantial conflict with respect to the question whether state and

non-bankruptcy federal statutes of limitation apply to causes of action, inherited by the trustee from the bankrupt or his creditors, in contrast to causes of action to set aside and recover preferences which were created and vested in the trustee by the Bankruptcy Act itself. Some of the decisions held that section 11d of the Act of 1898 controlled with respect to such inherited causes of action and other decisions held that state and federal non-bankruptcy statutes of limitation controlled with respect to those causes of action. Nevertheless, the opinions of the courts on *both* sides of that question repeatedly pointed out that a cause of action to set aside a voidable preference was governed exclusively by the limitation provision of the Bankruptcy Act itself.

A typical case, in which the cause of action was inherited by the trustee from creditors, and which was held governed by the state statute of limitations, is *Davis v. Willey*, 273 Fed. 397. That was an action by a trustee in bankruptcy under section 70e of the Bankruptcy Act to recover sums transferred to the defendant by the bankrupt and alleged to have been transferred in fraud of creditors. The trial court held as a conclusion of law that the action was barred by the California statute of limitations, which provided a period of three years. The Circuit Court of Appeals for the Ninth Circuit, in affirming the decree of the trial court for the defendant, held that the state statute of limitations controlled and that the limitation period in the bankruptcy act for the institution of suits by a trustee in bankruptcy did not control. The court there said:

> "This brings us to the question of whether the action is subject to the provision of limitation of the Code of Civil Procedure of California, or to such period of limitation as may be found in the Bankruptcy Act. By the Bankruptcy Act the trustee is given title to money fraudulently transferred, and he has a right to sue to recover it.

'The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred,' etc. Section 70e.

Section 11d of the Bankruptcy act of 1898 (Comp. St. Sec. 9595), provides that—

'Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.'

The section last quoted seems to be confined to suits founded strictly upon the Bankruptcy Act. For instance, a case within section 60b of the act (Comp. St. Sec. 9644) may be governed by it. The distinction between actions founded upon the Bankruptcy Act and those founded upon rights existing under the common or state laws is clearly recognized in Arnold Co .v. Shackelford, 140 Ga. 585, a case cited by plaintiff in error. But under section 70e heretofore quoted, the trustee may void any transfer which any creditor might have avoided. This right is conferred upon the trustee to put him in a position to assert the right which the creditor might have possessed in suing to set aside a transfer. *The trustee is really subrogated. No new rights, no additional remedies, are created for the benefit of the creditor, other than such as the creditor would have had had it not been for the bankruptcy.* In *Holbrook* v. *International Trust Co.*, 220 Mass. 130, 107 N. E. 665, the court said:

'All that section 70e of the Bankruptcy Act does is to give authority to the trustee in bankruptcy to enforce the rights of creditors to avoid fraudulent transfers of property made by the bankrupt if such fraudulent transfers have been made. That is to say whether a particular transfer was or was not fraudulent as to creditors under Section 70e *does not depend upon the United States Bankruptcy Act*, but upon the laws of the state which govern the transfer of the property in question.'

To the same effect is the able opinion by Judge Lowell in *In re Mullen* (D. C.) 101 Fed. 413; *Manning* v. *Evans*, (D. C.) 156 Fed. 106.

> Having sued herein under section 70e, the suit is based on the state law, and therefore the controlling point is whether McGinn could have maintained the action, under the law of the state. To this there is but one plain answer. The action, if brought in the state court, would be barred, and therefore the state statute has been correctly applied in the federal court, and, as plaintiff in error, McGinn, failed to assert any rights he may have had within the prescribed time, his action must now be held to be barred.
>
> The judgment is affirmed." (Emphasis ours.)

Harrigan v. *Bergdoll*, 270 U. S. 560, 70 L. Ed. 733, was a trustee's action, as successor to the bankrupt, to recover against a stockholder of the bankrupt corporation on account of unpaid stock subscriptions. This Court in that case held that the state statute of limitations applied and in so doing the Court said:

> "*The Bankruptcy Law* * * * *does not modify this* right of action against a stockholder *or create a new one.* It merely provides the right *created by the state law* shall pass to the trustee and be enforced by him for the benefit of creditors." (Emphasis ours.)

It is clear from the above italicized language that this Court recognized that state statutes of limitations did not apply to actions created by the Bankruptcy Act.

Another line of cases supported the proposition that suits brought by trustees in bankruptcy on causes of action inherited by them, both from the bankrupt and from creditors of the bankrupt, were governed by the limitation provision contained in section 11d of the Bankruptcy Act, and *not by state statutes of limitation.* Typical of this line of cases is *Isaacs* v. *Neece*, 75 Fed. (2d) 566. That was a suit brought by a trustee in bankruptcy under section 70e of the Bankruptcy Act against preferred stockholders of the bankrupt to cancel and set aside as fraudulent, and to recover back, payments the bankrupt

had made to them in redemption of their stock. The theory of the suit was that the trustee was suing *as successor* to the rights of creditors of the bankrupt. The defendant relied upon the *state* statute of limitations as a bar to the suit. The Circuit Court of Appeals, in holding that the state statute of limitations did *not* apply, but *that the limitation period contained in section 11d of the bankruptcy act did*, said:

> "We think the trustee's position that section 29 fixes the time he may sue all causes of action not already barred when the bankruptcy proceedings were filed, furnishes a more reasonable, a more workable theory of limitation than the one advanced in the *Davis* and *Drain* Cases, *supra*, that it applies to some actions, but not to others. This position is not only in accord with the uniform rule of decision under the corresponding section of the prior act, but it is in the interest of the just and effective administration of bankruptcy estates. Cf. *Coppard* v. *Stanush* (Tex. Civ. App.) 258 S.W. 254."

Some subsequent cases followed those first referred to above, which held that actions not based upon and created by the bankruptcy act were governed by state statutes of limitation, and not by section 11d of the Bankruptcy Act of 1898. See *Silverman* v. *Christian*, 123 N. J. Eq. 506, 198 Atl. 832 and annotation in 82 A.L.R. 810. The *Silverman* case cited with approval both *Davis* v. *Willey*, *supra*, and *Harrigan* v. *Bergdoll*, *supra*, and criticized *Isaacs* v. *Neece*, *supra*. Other subsequent cases, such as *Engebretson* v. *West*, *et al.*, 133 Nebr. 846, 277 N.W. 433, on the other hand, made the same holding as the Circuit Court of Appeals of the Fifth Circuit did in *Isaacs* v. *Neece*. This conflict, in cases not involving suits to recover voidable preferences, as to state versus the bankruptcy act limitation provision continued to rage until the passage of the Chandler Act.

No conflict existed prior to the passage of the Chandler Act in the cases involving causes of action created by Section 60b for the recovery of voidable preferences. The cases uniformly held that state statutes of limitation did not apply to such causes of action, but that they were governed by old section 11d.

The Circuit Court of Appeals for the Ninth Circuit, which is the same court that had decided the case of *Davis* v. *Willey*, 273 Fed. 397, held in the case of *Meikle* v. *Drain*, 69 Fed. (2d) 290, that the limitation provision contained in section 11d of the bankruptcy act, and *not the state statute of limitations*, applied to a trustee's suit to set aside a voidable preference based on section 60b of the bankruptcy act. In so holding, the court said:

> "The appellant contends that subdivision (d) of section 11 of the Bankruptcy Act (11 USCA sec. 29(d)) is the applicable statute of limitations, and that therefore this suit by the trustee having been brought before the estate has been closed is brought within time. The statute referred to is as follows: '(d) Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.'
>
> In our decision in *Davis* v. *Willey*, 273 F. 397, 400, we held that, where the action was brought by the trustee under section 70e of the Bankruptcy Act, the state statute of limitations controlled as to the institution of an action to enforce the right under the state law.
>
> The appellant, however, contends that, where the right of action arises under the Bankruptcy Act as in the case of the right given the trustee by section 60b of the Bankruptcy Act, the period of limitation is that fixed by section 11d of the Bankruptcy Act. This was tentatively recognized by this court in *Davis* v. *Willey, supra*, where it said: 'The section last quoted seems to be confined to suits founded strictly upon the Bankruptcy Act. For instance, a case within

section 60b of the act (Comp. St. sec. 9644 (11 USCA sec. 96, subd. (b)) may be governed by it.'

We think it clear that, where the right of action is given by the Bankruptcy Act and is based thereon and not upon a state statute, the provisions of section 11d of the Bankruptcy Act control, and, consequently, that a suit brought by the trustee during the pendency of the bankruptcy proceedings is within time.

We conclude, therefore, that the first cause of action stated by the appellant is not barred by the state statute." (Emphasis supplied.)

Another case, applying the rule announced in the case of *Meikle* v. *Drain,* 69 Fed. (2nd) 290, to a suit brought by the trustee to recover voidable preferences under section 60b of the bankruptcy act, is *Arnold Grocery Co.* v. *Shackelford,* 140 Ga. 585, 79 S.E. 470. In that case the court held that the limitation provision contained in section 11d of the bankruptcy act governed actions brought by the trustee for the recovery of voidable preferences under section 60b of the bankruptcy act of 1898. The Supreme Court of Georgia in so holding, referred to section 11d and said:

"Section 60b of the bankrupt act was not designed in any event to give the bankrupt a cause of action against the transferee, and therefore a case under that statute would stand on a different footing from a suit on some right of the bankrupt which might, by operation of law under section 70a of the bankrupt act, have passed from the bankrupt to the trustee. *Section 11d was manifestly intended to apply, among others, to cases falling under section 60b of the act, to the exclusion of any other statute of limitations.* Under this view the action was not barred, and the judge committed no error in so holding." (Emphasis supplied.)

It appears from the foregoing that prior to the passage of the Chandler Act in 1938 a conflict existed in the court

decisions, as to the correct rule of limitations applicable to causes of action inherited by the trustee in bankruptcy from the bankrupt and from the creditors of the bankrupt. One line held that the state statute of limitations applied and the other that the limitation provision contained in section 11d of the bankruptcy act applied. All of the decisions, however, recognized that the limitation provision contained in section 11d was the exclusive limitation provision applicable to suits brought by trustees to recover voidable preferences under section 60b of the bankruptcy act. This is shown by the decisions of the courts in *Davis* v. *Willey*, *Harrigan* v. *Bergdoll*, *Isaacs* v. *Neece*, *Meikle* v. *Drain*, and *Arnold Grocery Co.* v. *Shackleford*.

With this background of decisional law Congress enacted section 11e of the Chandler Act.

The above cases demonstrate that Congress by section 11e of the Chandler Act codified its concurrence that the limitation provision contained in the bankruptcy act exclusively governed suits by the trustee to set aside voidable preferences, and provided a period of two years subsequent to the date of adjudication to govern them.

Congress has also by section 11e preserved part of the rule expressed in *Davis* v. *Willey*, 273 Fed. 397, and *Harrigan* v. *Bergdoll*, 270 U. S. 560, namely, that causes of action inherited by the trustee in bankruptcy from the debtor and from his creditors are to be governed by the limitation period prescribed by the applicable state or federal law, other than the bankruptcy act, but fixed a two year limitation period, in any event, for bringing suit to enforce a cause of action not outlawed when the petition in bankruptcy was filed.

The reasons assigned by the foregoing cases for their holding that old section 11d exclusively applied to causes

of action created by the bankruptcy act applies with equal force to section 11e of the Chandler Act.

By providing in section 11e of the Chandler Act that the trustee should have two years from the date of adjudication within which to bring suits, Congress clearly indicated its intention to cut down the time for the commencement of such suits *to the exclusion of all other statutes of limitations.*

II.

Section 11e bars suits to set aside alleged preferences unless brought within two years from the date of adjudication since there is no state or federal limitation law other than section 11e of the Chandler Act applicable thereto.

Petitioner contends that section 15 of the Illinois Limitations Act (Bar Ass'n Stats. 1943, Chap. 83, Sec. 15) is applicable to this suit, and prescribes a five year period of limitation which had not expired when this suit was brought 38 days less than five years subsequent to the date of adjudication in bankruptcy. According to petitioner, that section is applicable to this proceeding because this suit constitutes a "civil action not otherwise provided for" by the Illinois Limitations Act. Section 15 of the Illinois Limitations Act, to be properly understood, must be read in connection with Sections 12, 13 and 14. The four sections provide as follows:

> "Sec. 12. The following actions can only be commenced within the periods hereinafter prescribed, *except when a different limitation is prescribed by statute*:
>
> Sec. 13. Actions for slander or libel shall be commenced within one year next after the cause of action accrued.

Sec. 14. Actions for damages for an injury to the person, or for false imprisonment, or malicious prosecution, or for a statutory penalty, or for abduction, or for seduction, or for criminal conversation, shall be commenced within two years after the cause of action accrued.

Sec. 15. Actions on unwritten contracts, express or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within five years next after the cause of action accrued." (Emphasis supplied.)

As interpreted by the Supreme Court of Illinois in *Handtoffski* v. *Chicago Traction Co.*, 274 Ill. 282, 113 N.E. 620 that portion of section 15 of the Illinois Limitations Act relied upon by plaintiff, providing a five year limitation for "all civil actions not otherwise provided for", has no application to the instant suit because of the admitted fact that section 11e of the Chandler Act itself governs this proceeding and in consequence this suit is a civil action which is "otherwise provided for". Petitioner concedes that the issue before this Court is not whether section 11e of the Chandler Act applies, but the proper construction to be given to section 11e in applying it to this suit.

Handtoffski v. *Chicago Traction Co.* involved an action for damages for personal injuries. The suit proceeded upon the theory that since the defendant was a common carrier and the plaintiff was a passenger, an implied contract existed on the part of defendant to carry the plaintiff safely. A suit was brought in assumpsit after the two years statutory period provided for bringing an action for injury to the person had expired. The plaintiff contended that section 15 of the Illinois Limitations Act applied and that the action was not barred by section 14. After setting

forth verbatim the above quoted sections 12-15 inclusive of the Illinois Limitations Act, the Illinois Supreme Court said:

"It will be observed that in sections 13, 14 and 15 the limitations are not based upon the form of the particular action named but on the particular injury sued for or upon the obligation out of which the action grows. The provisions of section 12 are to be considered and read as a part of sections 13, 14 and 15. Section 15, so far as it is material to this controversy, should be read as follows: Actions on unwritten contracts, express or implied, shall be commenced within five years next after the cause of action accrued, except when a different limitation is prescribed by statute. Said section 14 is also to be read that actions for damages for an injury to the person shall be commenced within two years next after the cause of action accrued, except when a different limitation is prescribed by statute. The natural construction of section 14 would seem to be that the limitation for all actions for damages for an injury to the person is fixed at two years next after the cause of action accrued, unless a different limitation is fixed by the statute for a particular character of personal injury, or a personal injury in a particular occupation, or under particular statutes giving damages for personal injuries to certain classes of individuals, *such as the Employers' Liability Act.* Said section 14 clearly fixes the limitation for personal injuries at two years, without any regard to the form of action. There is no indication anywhere in any one of said four sections that a different limitation is to be applied if any one of the particular actions mentioned may be brought in an action *ex delicto* or *ex contractu*, as the pleader may choose. Section 15 is broad enough in its language, *when considered alone*, to apply the limitation of five years to an action for personal injury when the action is brought on an implied contract, as in this case. When considered, however, with all the above sections of the statute quoted, it is manifestly against the plain intent of the statute to so construe it. Again, said section 14 is a particular provision designed to control actions for damages because of or

on account of an injury to the person, regardless of the form of action, and it must prevail over the more general provision made in section 15 and be treated as an exception to that general provision." (Emphasis supplied.)

Based upon such reasoning the Illinois Supreme Court held that the action was barred by section 14 because it had not been brought within two years from the date it accrued. It will be observed that the Court read into section 15 the qualification contained in section 12 "except when a different limitation is prescribed by statute" and held that section 15 does not apply when a different limitation is prescribed by statute, in that case the limitation prescribed in section 14 for the bringing of actions to recover for personal injuries.

The Supreme Court of Illinois pointed out in the above quotation that the fact that section 15 was broad enough in its language *when considered alone*, to apply the limitation of five years to the suit there in question was immaterial, since that section must be considered as a part of the *entire* Limitation Act including section 12, and with the qualification therein contained that no different limitation is prescribed by statute with respect to the cause of action sued upon.

The application of that holding by the Illinois Supreme Court to this proceeding is clear. Section 15 of the Illinois Act does not apply because the Chandler Act by section 11e itself *has prescribed a different limitation*, namely, two years subsequent to the date of adjudication.

Handtoffski v. *Chicago Traction Co.* may not be distinguished upon the ground that section 11e of the Chandler Act is not included within the language of section 12 of the Limitations Act of Illinois ("except when a different limitation is prescribed by statute") and is not a part of the Illinois Limitations Act, as is section 14 thereof, which was ap-

plicable to the cause of action sued upon in that case. The above quotation from the opinion expressly makes reference to a different limitation fixed under particular statutes, namely, "a different limitation * * * fixed * * * under particular statutes * * * such as the Employers' Liability Act." The reference is to the Federal Employers' Liability Act which contains a provision expressly limiting the bringing of suits thereunder to two years after the date the cause of action accrues. (Title 45, Sec. 56, USCA. See *Engel* v. *Davenport*, 271 U. S. 33 at 38; *Herb* v. *Pitcairn*, 384 Ill. 237, 51 N.E. (2d) 277. The Supreme Court of Illinois thus points out that the five year period of limitation provided in section 15 of the Illinois Limitations Act would not apply to a suit brought under the Federal Employers' Liability Act in an Illinois State Court because a different limitation period is prescribed by the Federal statute itself. Many other examples could be given. Thus the Federal Securities Act creates causes of action for violation thereof and provides expressly the time within which suits must be brought upon such causes of action, whether brought in the State Court or in the Federal Court. Such a period of limitation would govern such a suit to the exclusion of section 15 of the Illinois Limitations Act even though the Federal statute prescribing a different limitation is not a part of the Illinois Limitations Act itself.

The same principle excludes from application to the instant suit the five year limitation provided by section 15 of the Illinois Limitations Act because section 11e of the Chandler Act itself prescribes the limitation period applicable thereto, namely, two years after the date of adjudication in bankruptcy.

Petitioner bases his attempt to invoke section 15 of the Illinois Limitations Act upon the language of section 11e of the Chandler Act. He cannot at the same time contend that section 11e of the Chandler Act has no application.

Nevertheless, because section 11e of the Chandler Act *does* have application, section 15 of the Illinois Limitations Act does *not*.

No claim is made that any other statute, either State or Federal, provides a limitation period applicable to this proceeding. Since section 15 of the Illinois Limitations Act does not apply as construed by the Supreme Court of Illinois, the only limitation provision applicable is the two year period contained in section 11e which operates to bar the instant suit.

III.

Applying the principle of statutory construction that the words "Federal or State law" are presumed to have the same meaning in both instances in which they are used in section 11e of the Chandler Act, the conclusion follows that the section prescribes a limitation period of two years to bar actions by the trustee to set aside alleged voidable preferences.

For the convenience of the Court we again quote here section 11e of the Chandler Act, as follows:

> "A receiver or trustee may, within two years subsequent to the date of adjudication or within such further period of time as the *Federal or State law* may permit, institute proceedings in behalf of the estate upon any claim against which the period of limitation fixed by *Federal or State law* had not expired at the time of the filing of the petition in bankruptcy." (Emphasis supplied)

The words "Federal or State law" as used in the next to the last line in the above quotation from section 11e clearly refer to claims against which the period of limitation fixed by such Federal or State law could have expired prior to the filing of the petition in bankruptcy.

The only kind of cause of action to which such a State or Federal non-bankruptcy limitation law could have application would be one which pre-existed the filing of the petition in bankruptcy and which the Trustee would inherit either from the bankrupt or his creditors. Since the meaning of the phrase "Federal or State law" as used in the next to the last line of section 11e is limited to the laws applicable to causes of action which could pre-exist the date of the filing of the petition in bankruptcy, the same meaning must be given to the phrase "Federal or State law" as used in the third line of said section. It is fair to assume that the said phrase, in the absence of an indication to the contrary, was employed by Congress throughout section 11e in the same, and in a different sense, *United States* v. *Cooper Corp.*, 312 U. S. 600 at 607 and *Mowcaqua Coal Corp.* v. *Ind. Com.*, 360 Ill. 194, 195 N.E. 607. When such meaning is given to that phrase in the third line, it is clear that the provision "for such further time as the Federal or State law may permit" cannot apply to this suit since it is based upon a cause of action (to set aside an alleged voidable preference) which cause of action could not come into existence until the date of adjudication in bankruptcy and which, therefore, could not preexist the filing of the petition in bankruptcy.

This construction, which follows from applying a common and well established principle of statutory construction, is identical with the construction which follows from considering the meaning of Section 11e in the light of the unanimous holdings of the courts construing Section 11d of the Act of 1898, to the effect that only the limitation provision prescribed by the Bankruptcy Act applies to suits by the Trustee to set aside voidable preferences.

Summarizing the position of respondent, we contend that the instant suit is barred by Section 11e of the Chandler Act because it was not brought within two years after

the date of adjudication in bankruptcy; that Section 11e must be interpreted to have that effect because (1) such interpretation establishes historical continuity with the unanimous holdings of the courts interpreting Section 11d of the Act of 1898 to the effect that the limitations provision contained in the Bankruptcy Act applies to suits by the Trustee to recover alleged voidable preferences to the exclusion of all other limitation laws, (2) because no other State or Federal law prescribing a period of limitation has been found which is applicable to a proceeding of the character of this suit, and (3) because giving the phrase "Federal and State law" the same meaning in the first part of Section 11e as it must have in the second part thereof, demonstrates the inapplicability to suits by the Trustee to recover alleged voidable preferences of the language in the first half of Section 11e "or within such further period of time as the Federal or State law may permit", confining the limitation period prescribed for causes of action of such character to "two years subsequent to the date of adjudication."

IV.

Reply to petitioner's argument.

Petitioner's first point is that the meaning of Section 11e of the Bankruptcy Act and of Sections 12 and 15 of the Illinois Statute of Limitations is clear and they require no construction.

In view of the fact that both courts below concurred in interpreting both Section 11e and the Sections of the State Statute of Limitations in a manner diametrically opposed to the construction for which petitioner contends, this is obviously an oversimplification.

So far as Section 11e is concerned, it overlooks the decisional and legislative history of this phase of the

bankruptcy legislation as well as the language of Section 11e itself which is quoted *supra* at p. 24. The entire adjective clause—"against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy"—immediately following the words "any claim" obviously qualifies that term and makes manifest the fact that Congress had in mind "claims" arising prior to the institution of the bankruptcy proceeding, since it could only be with respect to claims of such a character that the period of limitation fixed by Federal or State law had expired partially at the time of the filing of the petition in bankruptcy. The emphasis of the various draftsmen and commentators referred to in petitioner's brief upon the function of Section 11e as a statute of extension further demonstrates their concentration upon the problem of dealing with claims accruing prior to bankruptcy and vesting in the Trustee under Section 70 of the Bankruptcy Act. This manifest qualification of the phrase "any claim" makes mandatory a construction of Section 11e with reference to causes of action accruing subsequent to the filing of the petition in bankruptcy and conditioned by the Bankruptcy Act upon an adjudication—causes of action to recover alleged voidable preferences, such as those sued upon herein—in order to ascertain the Congressional intent respecting them.

The quotation from this Court's opinion in *U. S.* v. *Goldenberg*, 168 U. S. 95 at 102-103, at p. 10 of petitioner's brief states that "there are cases in which the letter of the statute is not deemed controlling, * * * when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent." That language fits this case perfectly.

The case of *Nairn* v. *McCarthy*, 120 Fed. (2d) 910 (referred to in a different connection in petitioner's brief, p. 15) clearly demonstrates the fallacy of the assumption of petitioner that language appearing superficially clear

to a layman justifies no construction when used in an Act of Congress passed in exercise of its bankruptcy power and dealing in general terms with statutes of limitation both contained in the Bankruptcy Act and in State laws. In that case the Circuit Court of Appeals for the 7th Circuit held that the language of Section 77B, Sub. b(10) of the Bankruptcy Act as amended (U.S.C.A., title 11, sec. 207, sub. b(10)) which reads as follows:

> "The running of **all** periods of time prescribed by any * * * * provision of this Act (title), and by **all statutes of limitations**, shall be suspended during the pendency of a proceeding under this section." (Emphasis ours)

did not suspend State statutes of limitation, but only "the running of all periods of time and all statutes of limitations contained in any provision of the Bankruptcy Act" and that there was no intention to make it applicable otherwise." (120 Fed. (2d) at 911-912) Based upon this interpretation of the Bankruptcy Act provision, the Court held that the Illinois State limitation provision was not suspended and the suit in consequence was barred by it. We submit that the language, "any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy" (being the language of Section 11e) is no clearer than the language, "all statutes of limitation" contained in Section 77B of the Bankruptcy Act and construed by the Court in the case upon which petitioner relies.

An even closer case is presented by the line of cases, including the decision of this Court in *Harrigan* v. *Bergdoll*, 270 U. S. 560, 70 L. Ed. 733 (referred to *supra* at p. 14), construing Section 11d of the Bankruptcy Act of 1898 (11 U.S.C.A., Sec. 29(d)) as providing entirely different treatment of suits brought by the Trustee to recover voidable preferences on the one hand and suits brought by the Trustee based upon causes of action arising under

State law and non-bankruptcy Federal law on the other hand, in spite of the plain and unitary treatment of all suits by the language of Section 11d—"Suits shall not be brought by or against a Trustee of a bankrupt estate subsequent to two years after the estate has been closed." This line of cases construed Section 11d to mean that suits brought by the Trustee on causes of action created by the Bankruptcy Act were governed exclusively by the two year limitation period provided in Section 11d, while all other suits were subject to the limitation provision of State and non-bankruptcy Federal laws. The rule laid down in this line of cases is the one codified in the present Section 11e.

The reasons for construction become all the more "cogent" when it is recalled that under the Bankruptcy Act of 1841, Bankruptcy Act of 1867 and the Bankruptcy Act of 1898, in other words throughout the history of bankruptcy legislation by Congress pursuant to its constitutional power, the courts have consistently and without exception construed the existing congressional legislation on the subject to express the intent of Congress that with respect to causes of action created by the Bankruptcy Act, the period within which the Trustee might sue was to be governed exclusively by the period set forth in the Bankruptcy Act, without reference to different periods of limitation applicable generally to suits at law and in equity arising either under State law or non-bankruptcy Federal statutes. The fundamental importance of this consideration becomes overwhelming in our judgment in determining the proper construction of Section 11e in view of the failure of Congress through any draftsman, commentator, senator, representative, report, document or otherwise, so exhaustively collected in petitioner's brief, to make any suggestion that one of the purposes of Section 11e was for the first time in one hundred years of bankruptcy legislation to set aside this established rule.

The contention of petitioner that the creation by the Illinois limitation act of a five year period of limitation with respect to suits brought by Trustees in bankruptcy to recover voidable preferences is so clear as to prohibit construction is equally wanting in merit. Again both courts below have disagreed with him. Moreover, a proper reading of the decision by the Illinois Supreme Court in *Handtoffski* v. *Chicago Union Traction Company*, 274 Ill. 282, 113 N.E. 620, *supra*, pp. 20-23 shows disagreement with him as well by the Supreme Court of Illinois, not only as to the statutory provision being so clear as to negate construction, but also as to its meaning.

Petitioner's effort (Brief pp. 11-12) to discredit our insistence upon following the construction of the catch-all provision of the Illinois statute of limitations by the Illinois Supreme Court in the *Handtoffski* case (in determining whether it is adopted by section 11e in fixing the period of limitation for the bringing of this suit) by stating that it "leads only into a sort of statutory and endless Renvoi" is in reality only a red herring. If we first consider section 11e we find it fixes a period of 2 years from the adjudication, except where a state law fixes a longer period. The question then arises, does section 15 of the Illinois statute apply and fix a five year period. The proper answer is it does, if a different limitation period is not prescribed by section 11e. If we then inquire whether section 11e does fix a different limitation period we find that it does, and that it fixes a 2 year period, unless section 15 applies and fixes a five year period. The Renvoi results from petitioner's attempt to use the catch-all provision of section 15, not from any theory of ours. We say that the period is two years both (1) because petitioner has failed to show that section 15 applies. (He can not do so because he cannot show that a different limitation is not prescribed by section 11e, and such showing is a

condition precedent to the application of section 15.) and (2) because section 11e prescribes a two year period where no state or federal non-bankruptcy statute permits a longer period. The fact that each statute re-refers to the other is not our doing; that is inherent in the statutes only because the contention is made, as petitioner has made it, that section 11e adopts the catch-all provision of section 15.[1]

> The statement in petitioner's brief, p. 12, beginning "The limitation in Section 11e of the Bankruptcy Act must necessarily . . ."

completely begs the question. It ignores both the language and legislative history of Section 11e and the interpretation by the Illinois Supreme Court of the meaning of Section 15 of the State Limitation Act, as qualified by Section 12 thereof.

Pages 12-15 of petitioner's brief set forth the "history and objectives" of Section 11e to demonstrate that they require that it be applied in accordance with its "plain letter." Petitioner begins his argument "The difficulties it was intended to obviate and its legislative history all show. . . ." We have already pointed out that the question whether the period of limitation applicable to causes of action of the Trustee to set aside voidable preferences was not a "difficulty" which Section 11e was intended to obviate since it was not a "difficulty" of any character. From the beginning of bankruptcy legislation there had been no

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[1] This whole problem is avoided by adopting our primary contention that section 11e fixes a two year period for the bringing by the Trustee in Bankruptcy of actions to recover voidable preferences, and does not adopt any other period with respect thereto, in accordance with the established rule on this subject under all the bankruptcy Acts, and by recognizing that the provision for the adoption of longer periods applies only to causes of action created by state and federal non-bankruptcy laws.

deviation from the rule that the period within which such a proceeding might be brought by the Trustee has been fixed exclusively by the Bankruptcy Act without regard to limitation provisions contained in either State or non-bankruptcy Federal laws. We have also pointed out that petitioner's brief itself makes clear that in the entire legislative history of Section 11e, beginning with the 1930 activities looking towards amendment of the Bankruptcy Act and ending with the enactment of the Chandler Act in 1938, no one in any form, in or out of Congress, suggested that the purpose of Section 11e was to terminate this long standing and well established rule of bankruptcy law. It is unthinkable that no reference of any kind would have been made to this purpose if Congress had intended to embody it in Section 11e.

Although at numerous places in petitioner's brief (pp. 18-21) he insists that Section 11e must be "construed solely as a statute of extension"—petitioner nevertheless quotes (Br. p. 23) from 1 Collier on Bankruptcy, 14th ed., a statement which twice refers to Section 11e as a "statute of limitations" and petitioner couples with this quotation his own statement that it conforms "with the legislative history of the sub-section" and gives "proper scope to its plain language." If petitioner is right in treating Section 11e solely as a statute of extension, we respectfully submit that Collier must be mistaken in referring to it as a "statute of limitations." By the same token, if Collier is correct petitioner must be wrong. That it provides a period of limitation is perfectly obvious when one seeks to answer the question within what period of time may the Trustee sue upon a cause of action with respect to which no State or non-bankruptcy Federal law provides a limitation. The answer is "obviously two years." The only alternative answer would be "until Judgment Day." We do not deny that Section 11e also acts as a statute of exten-

sion* with respect to suits by the Trustee upon causes of action with respect to which upon the date of adjudication *properly applicable* State or non-bankruptcy Federal laws provide a limitation period expiring within less than two years after the date of adjudication. That has no bearing whatever upon this case since the Court is not dealing herein with any such cause of action or any such period of limitation.

At page 24 of petitioner's brief he quotes from a Commentary on the Chandler Act by Mr. Weinstein. As an examination thereof will disclose, such quotation contains no statement, explicit or otherwise, to the effect that a suit by a trustee to set aside voidable preference is not subject, exclusively, to the limitation period of two years from the date of adjudication provided by Section 11e.

The word "applicable" in the last sentence of such quotation is significant as indicating the apparent view of Mr. Weinstein that a longer period provided by a state or non-bankruptcy federal law would apply only to those causes of action vested in the trustee, to which Section 11e

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* The absence of novelty in this conception appears from the following quotation relative to the limitation provision of the Bankruptcy Act of 1867 from *Freelander* v. *Holloman*, Fed. Cas. No. 5081 (decided 1873) (Vol. 9, Fed. Cas. p. 748 at p. 749):

"This provision in the second section provides that all rights of action barred upon the appointment of the assignee shall remain barred, whether in favor of or against the assignee, and gives both to the assignee and those claiming an adverse interest in any property claimed by the assignee in the adverse possession of others, or claimed by others, to property in the hands or under the control of the assignee, two years in which to commence proceedings in equity or at law for its recovery. This is a separate and independent provision, and has no connection with any state statute on the subject; *it may extend or may contract* the time provided in the state statutes of limitations. Thus, if at the time of the appointment of the assignee but a few days remained of the time necessary to complete the bar, the time would be extended; or if the statute had just commenced running, and under the state law would have ten years to run, as in case of actions of ejectment to recover real estate, it would be complete within two years." (Emphasis ours.)

permitted them to apply; in other words to which they were "applicable."

An instance of the application of a non-bankruptcy Federal statute of limitations would arise if the debtor at the date when the petition in bankruptcy was filed had a right of action against a third person, which was not then outlawed, for a violation of the Federal Securities Act of 1933. The statute of limitations applicable to the cause of action, which the trustee would inherit, would be the one contained in that Federal statute (USCA, Title 15, Sec. 77m). If the trustee inherited a cause of action arising under State law from either the bankrupt or creditors of the bankrupt which was not outlawed at the time of the filing of the petition in bankruptcy, the applicable statute of limitations would be the state statute governing it, if bankruptcy had not ensued.

The same comment on our part is applicable to the quotation at pages 23-24 of petitioner's brief from Collier's Bankruptcy, 14 Ed. published in 1940. We find there the same use of the word "applicable" as is made by Mr. Weinstein and the same failure to make any statement to the effect that a suit by a trustee to set aside a voidable preference is not subject exclusively to the limitation period of two years subsequent to the date of adjudication provided by Section 11e. In our opinion both of these authorities support our position. They certainly do not in any way attack it or support any contention to the contrary of our position.

In the quotation from Collier in petitioner's brief, p. 24, appears the statement:

> "The character of the suit or proceeding brought is immaterial so long as it is 'in behalf of the estate'."

An examination of the last prior (13th) edition of Collier on Bankruptcy discloses the origin of the above quoted

statement from the later edition. In said 13th edition he makes the statement with reference to Section 11d of the Act of 1898, that (Vol. 1, p. 425)

> "It seems also that the character of the suit is immaterial provided it amounts to the prosecution of a demand in a court of justice, * * *"

In support of the foregoing statement, Collier cites *Bailey* v. *Glover*, 21 Wall. 342, and two State cases, all involving the Act of 1867. It is apparent, therefore, that Collier in using the above quoted language was not introducing a *novel* thought resulting from the enactment of Section 11e of the Chandler Act in 1938, but was merely repeating an idea which was originated with reference to the Act of 1867 and was continued with reference to Section 11d of the Act of 1898. It follows that the above quoted statement from Collier furnishes no basis for the contention of petitioner that the proper interpretation of Section 11e subjects to State statutes of limitation for the first time in almost 100 years of Congressional legislation relative to bankruptcy suits based on causes of action to set aside voidable preferences.

In his reply brief filed in support of his application for certiorari petitioner attempted to escape the holding in *Handtoffski* v. *Chicago Union Traction Company*, 274 Ill. 282, 113 N.E. 620, by asserting that Section 15 of the Illinois Limitations Act does apply herein because no different limitation is prescribed by Section 11e and by dismissing the reference in the opinion of the Supreme Court of Illinois in that case to causes of action created under the Employers' Liability Act as inapplicable here, since the limitation fixed in the Federal Employers' Liability Act is an integral part of the substantive right which may not be modified by a State statute of limitations. Petitioner overlooks the fact that the cause of action to set aside voidable preferences is created by the Bankruptcy

Act and Section 11e is properly to be regarded, in so far as it is applicable to such causes of action, as an integral part of the substantive right. It differs in no respect in this regard from the causes of action created by the Employer's Liability Act. The importance of the *Handtoffski* case is that it in effect holds that because of Section 12 of the State Limitations Act, which must be read in *pari materia* with Section 15, the "catch all" provision of Section 15 has no application to causes of action of such character. Nothing in Section 11e of the Bankruptcy Act can change the meaning of Section 15 of the State Limitations Act as interpreted by the Illinois Supreme Court in the *Handtoffski* case. Section 11e did not adopt the *time* fixed in the State law as the applicable period, as petitioner heretofore contended in this connection. On the contrary, it adopts *the State law* with respect to those causes of action as to which the State law prescribes a limitation period. In making this statement we do not wish to be understood as waiving our contention that Section 11e applies to the suit at bar a two year limitation without regard to State law. This portion of the argument deals with the other question, which is, whether there is *any State law* providing a limitation period with respect to the cause of action in the suit at bar.

Petitioner attacks the opinion of the Circuit Court of Appeals as being "plainly erroneous." (Br. pp. 25-27) While we do not agree with him it must be remembered that if the order under review is correct it must be affirmed whether the reasons for it stated in the opinion below are sustained or not.

The opinion of the Circuit Court of Appeals cannot be understood by reading the excerpts quoted in petitioner's brief. It must be read as a whole. (Rec. 20-23)

The argument made by respondent to the Court of Appeals was substantially the same as respondent's argu-

ment herein contained. There are portions of the opinion of the Circuit Court of Appeals which are not as clear and unambiguous in adopting respondent's contentions as they might be. Nevertheless, it is plain to us from reading that court's opinion that it held (1) the cause of action to recover a voidable preference having been created by the Bankruptcy Act which also contains a provision (Sec. 11e) governing the time within which suit must be brought thereon, that provision controls and may not be modified by the Illinois State Statute of Limitations, and (2) that the Illinois State Statute of Limitations does not purport to fix a period of limitation governing the suit at bar, since it has no application to a cause of action created by a statute which at the same time limits the time within which suit may be brought. The opinion summarizes the holding in the sentence:

> "Since it is the Bankruptcy Act which creates the cause of action here, it must (be held to) provide the period for bringing it, and in the absence of other provision, the two-year one applies." (Rec. p. 22)

The rule stressed by counsel for petitioner (Br. p. 26) that, when a cause of action arises out of a Federal statute containing no provision for any period of limitation, the State statute of limitations will control, is conceded by us provided there is a State statute of limitations which relates to such cause of action. However, such principle has no application here, both because the Bankruptcy Act by Section 11e does provide the limitation period and at the same time creates the cause of action and for the additional reason that there is no State statute of limitations, according to the Supreme Court of Illinois, which relates to causes of action of the character sued upon herein.

Since petitioner agrees with us that the primary question at bar is the proper construction of Section 11e and since Section 11e is a part of the Bankruptcy Act creating causes of action to recover voidable preferences, even if petitioner

were correct in asserting (Br. p. 25) that the Circuit Court of Appeals has in effect interpolated into Section 11e after the phrase "or within such further period of time as the Federal or State law" the words "creating the cause of action" before "may permit", such interpolation would be wholly immaterial. Petitioner himself contends that the State law is applicable only because of its adoption by Section 11e. Consequently, this attack upon the Circuit Court of Appeals opinion has no practical significance whatsoever in determining the correctness of the order under review.

We are confident that the order under review is correct and should be affirmed since it carries out the readily ascertainable intention of Congress in enacting Section 11e to continue in effect the well established rule (almost a century old and which has survived the enactment of several bankruptcy acts), that the limitation period contained in the Bankruptcy Act itself, to the exclusion of all other periods of limitation to be found in State or non-bankruptcy Federal laws, shall fix the period within which suits may be brought by the Trustee to recover voidable preferences. For this purpose Section 11e has fixed a period of two years from the date of adjudication, which period expired almost three years before petitioner brought the instant suit.

If legislative considerations were in order, the wisdom of a reasonably short period of limitations for the bringing of a suit by the Trustee in Bankruptcy to set aside alleged voidable preferences appears to us to be obvious. All transactions occurring within four months prior to the filing of the petition in bankruptcy in which creditors of the bankrupt receive payments on account of their claims remain subject to attack and consequently in an unsettled condition until suit is brought by the Trustee to set them aside as alleged voidable preferences or the period of limitation within which such suit might be brought has

expired. This Court pointed out in *Stoll* v. *Gottlieb*, 305 U. S. 165, 83 L. Ed. 104 that the principle requiring that there be an end to litigation is a salutary one. It is particularly important with respect to commercial transactions.

The same considerations making it wise to provide a reasonably short period of limitation for actions of this character makes it equally wise that the same limitation be uniformly applied in all actions of this character, without regard to the particular state or judicial district in which the proceedings may be brought. It is a matter with respect to which it is just as important for Congress to speak without interference or modification by State law as is the fixing of the period of time prior to the filing of the petition in bankruptcy within which must occur transactions subject to attack as voidable preferences. This uniformity can be accomplished only by maintaining in full force and effect the rule practically a century old that the limitation period for the bringing of actions of such character is to be found in the Bankruptcy Act itself to the exclusion of all other laws, either State or Federal, providing limitation periods.

CONCLUSION.

We submit that the judgment below is proper and should be affirmed.

Respectfully submitted,

JOHN M. ELLIOTT,
CHESTER L. ANDERSON,
Peoria, Illinois,
WALTER BACHRACH,
WALTER H. MOSES,
231 So. LaSalle St.,
Chicago, Illinois,
Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 322.—October Term, 1944.

Roscoe Herget, Trustee in Bankruptcy of N. L. Rogers & Company, Inc., an Illinois Corporation, Bankrupt, Petitioner, *vs.* The Central National Bank & Trust Company of Peoria, a National Banking Corporation.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[January 29, 1945.]

Mr. Justice Murphy delivered the opinion of the Court.

This case presents the narrow issue of whether Section 11e of the Bankruptcy Act, 11 U. S. C. § 29e, bars at the end of two years from the date of adjudication in bankruptcy an action brought by the trustee in bankruptcy to set aside and recover a preferential transfer.

On April 11, 1938, N. L. Rogers & Company, Inc., filed a voluntary petition in bankruptcy and was duly adjudged a bankrupt on the same day. On March 3, 1943, the petitioner trustee filed a complaint under Section 60 of the Bankruptcy Act, 11 U. S. C. § 96, against the respondent bank to set aside and recover payments totalling over $300,000 alleged to have been given illegally by the bankrupt to the respondent within four months prior to the filing of the bankruptcy petition. The District Court dismissed the complaint on the ground that the suit had been instituted more than two years subsequent to the date of adjudication in bankruptcy and hence was barred by Section 11e. It thus overruled the trustee's contention that Illinois law allowed him five years in which to bring this action and that this five-year limitation was controlling since it fell within the provision of Section 11e allowing suits "within such further time as the Federal or State law may permit." 53 F. Supp. 265. The court below affirmed this judgment. 141 F. 2d 150. In our view, such a result is plainly right.

Two-year limitations on suits by and against trustees have long been integral parts of federal bankruptcy statutes. Section 8 of the Bankruptcy Act of 1841, 5 Stat. 440, 446, 447, applied a two-year limitation on any "suit at law or in equity" by or against any assignee of the bankrupt. Courts held that this related only to suits involving claims held by the bankrupt before assignment, rather than to suits on claims arising after the bankruptcy proceedings began,[1] but its applicability as to rights accruing to the assignee on the date of the assignment by virtue of the Bankruptcy Act apparently was not raised or determined.

Section 2 of the Bankruptcy Act of 1867, 14 Stat. 517, 518, which was reenacted in substantially the same form in Revised Statutes § 5057, placed a similar limitation on any "suit at law or in equity . . . by or against such assignee . . . touching the property and rights of property" of the bankrupt. Here again the limitation was held to apply only to suits growing out of disputes and transactions prior to assignment.[2] *Dushane* v. *Beall*, 161 U. S. 513. But in *Bailey* v. *Glover*, 21 Wall. 342, 346, this Court stated that this limitation "applies to all judicial contests between the assignee and other persons touching the property or rights of property of the bankrupt transferable to or vested in the assignee." See also *Gifford* v. *Helms*, 98 U. S. 248, 252; *Jenkins* v. *International Bank*, 106 U. S. 571, 575. The inference seems clear from this that suits to set aside preferential transfers made prior to the assignment would have been held to fall within the reach of the two-year limitation.

Section 11d of the Bankruptcy Act of 1898, 30 Stat. 544, 549, provided that "Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed." State and lower federal courts explicitly and uniformly held that this two-year limitation controlled the trustee's right to set aside and recover preferential transfers under Section 60 of the Act.[3] But courts differed as to whether Section 11d or state statutes of limitation applied to causes of action in-

[1] See In re Conant, 5 Blatch. 54; Stevens v. Hauser, 39 N. Y. 302. Cf. Banks v. Ogden, 2 Wall. 57, 70.

[2] See Bowen v. Delaware, L. & W. R. R. Co., 153 N. Y. 476, 47 N. E. 90. Cf. Phelan v. O'Brien, 13 F. 656.

[3] Davis v. Willey, 273 F. 397; Meikle v. Drain, 69 F. 2d 290; Arnold Grocery Co. v. Shackelford, 140 Ga. 585, 79 S. E. 470.

herited by the trustee from the bankrupt or the bankrupt's creditors.[4]

It was this conflict under Section 11d of the 1898 Act that was primarily responsible for the framing of the new Section 11e in 1938. This latter provision, which is controlling in this case, settles the problem by stating in part that "A receiver or trustee may, within two years subsequent to the date of adjudication or within such further period of time as the Federal or State law may permit, institute proceedings in behalf of the estate upon any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy."

In light of the judicial construction and application of analogous provisions in earlier bankruptcy acts, it is significant that Congress in Section 11e failed to enlarge the time for bringing suits arising under the Bankruptcy Act by making state statutes of limitation of longer duration applicable to such federal causes of action. None of the prior provisions had been construed so as to apply state statutes of limitations to actions by trustees based on claims arising under the bankruptcy statutes. And the courts had frankly and unmistakably imposed the two-year limitation of Section 11d of the 1898 Act, which is the immediate predecessor of Section 11e, to suits by trustees to set aside and recover preferential transfers. The legislative background and history, as well as the language of Section 11e, are barren of any basis for concluding that Congress intended to make suits of this nature subject to longer limitations imposed by state laws.[5] Congress could

[4] Among those cases holding that Section 11d applied are Isaacs *v.* Neece, 75 F. 2d 566, Engebretson *v.* West, 133 Neb. 846, 277 N. W. 433, and Callaghan *v.* Bailey, 293 N. Y. 396, 57 N. E. 2d 729. Cases holding that the state statutes of limitation applied include Davis *v.* Willey, 273 F. 397, and Silverman *v.* Christian, 123 N. J. Eq. 506, 198 A. 832. See also Charlesworth *v.* Hipsch, Inc., 84 F. 2d 834; Nairn *v.* McCarthy, 120 F. 2d 910.

[5] H. Rep. No. 1409 (75th Cong., 1st Sess.) p. 20, stated that "A new provision in subdivision e permits receivers and trustees within 2 years after the adjudication to institute suits on claims against which the period of limitation fixed by Federal or State law had not expired at the time of the bankruptcy or within such further time as the Federal or State law may permit."

S. Rep. No. 1916 (75th Cong., 3rd Sess.) p. 13, stated: "The provisions of the existing law in regard to suits by or against trustees have been revised and modified, and receivers are included. The period of limitations in respect to such suits has been restricted in the bill to 2 years after the date of adjudication instead of 2 years after the date of the closing of the estate."

See also Joint Hearings before the Subcommittees of the Committees on the Judiciary (72d Cong., 1st Sess.) on S. 3866, Part 4, pp. 932-933; 6 Journal of Nat. Assoc. of Referees in Bankruptcy 65; 1 Collier on Bankruptcy (14th Ed.) 1186.

have expressly restricted the field within which the two-year limitation was to be operative had it so wished. Its failure to do so cannot be ignored.

The actual language used in Section 11e is clearly appropriate to an action under Section 60. Section 11e is not limited by its words to actions inherited by the trustee; nor does it discriminate against actions by the trustee accruing to him under the Act. It provides simply that the trustee must bring action on any claim in behalf of the estate within two years subsequent to the date of adjudication or within such further time as the federal or state law permits, provided that such law did not bar the action on the date when the petition was filed.

Here the only applicable law is Section 60 of the Bankruptcy Act, which generates the cause of action and which contains no time limitations as to actions brought pursuant thereto. And since the trustee's right to set aside and recover preferential transfers relates to transactions occurring prior to the filing of the petition and since this right did not accrue before the date on which the petition was filed, such an action obviously cannot be excluded from the limitation on the ground that it was barred by federal or state law at the time the petition was filed. Hence the trustee was bound to "institute proceedings in behalf of the estate" to set aside and recover any preferential transfers "within two years subsequent to the date of adjudication." More than two years having elapsed between the date of adjudication and the commencement of the suit in this instance, the courts below properly held that the action was barred under Section 11e.

Inasmuch as the federal Bankruptcy Act has created the liability and has also fixed the limitation of time for commencing actions to enforce it, we have no occasion to consider the trustee's arguments concerning the applicability and construction of the Illinois statutes of limitation. Cf. *Campbell* v. *Haverhill*, 155 U. S. 610; *McClaine* v. *Rankin*, 197 U. S. 154; *Rawlings* v. *Ray*, 312 U. S. 96; *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 155, 156.

The judgment of the court below is

Affirmed.